

ST 02-0034-GIL 02/06/2002 CIGARETTE TAX

The cigarette tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State, and is at the total rate of 29 mills per cigarette; or 58¢ on a package of 20 cigarettes. See 86 Ill. Adm. Code 440.10. (This is a GIL).

February 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is a request for a formal letter ruling. Please advise whether any of these transactions require payment of Illinois excise tax, Illinois use tax, Illinois sales tax or any other Illinois tax.

Middleman A brings a truckload of cigarettes from North Carolina into Illinois. In Illinois, Middleman A sells all of the cigarettes to Middleman B. Middleman B will sell all of the cigarettes to a Middleman C in Canada.

Please be advised that a trial date regarding the above is set for February 4, 2002, I would appreciate if you would issue your ruling no later than January 16, 2002. Should you have any questions do not hesitate to call.

The cigarette tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State, and is at the total rate of 29 mills per cigarette; or 58¢ on a package of 20 cigarettes. See 86 Ill. Adm. Code 440.10, enclosed.

The taxes are imposed upon the retailer with the distributor required to prepay or pre-collect the taxes. The amount of the tax must be added to the price of the cigarettes sold by such distributor. Collection of the tax must be evidenced by a stamp or stamps affixed to each original package of cigarettes, as provided in the Act and in the regulations. Section 440.10(h)

Section 440.30(c) states, in part, as follows:

"The Act defines "distributor" as meaning any and each of the following:

- 1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this act has been

paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business.”

Section 440.50 allows the Department, or any person authorized by the Department, to sell tax stamps only to licensed distributors. It is unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit therefor from the Department.

The first distributor who delivers cigarettes or causes them to be delivered in this State to a purchaser is required to affix a proper stamp or stamps to each original package of such cigarettes before delivering such cigarettes (or causing them to be delivered) in this State to the purchaser. See Section 440.50(h). The term “purchaser” used in this context is the end user and not another distributor who intends to resell the cigarettes.

Section 440.80 governs transporter permits. Persons transporting within this State unstamped original packages containing more than 2,000 cigarettes in any single lot or shipment and who are not otherwise excepted under Section 9C of the Cigarette Tax Act must obtain a Cigarette Transporter Permit from the Department.

Your letter has insufficient facts upon which to base a ruling. However, it would appear that when Middleman A brings a truckload of cigarettes from North Carolina into Illinois, he must either be permitted as a transporter (assuming he was not going to distribute them in Illinois) or be licensed as a distributor if he were going to distribute them in Illinois. Your letter states that Middleman A makes a sale in Illinois to Middleman B. This would require Middleman A to be licensed as a distributor. The sale from Middleman A to Middleman B would be a sale for resale and not subject to either Cigarette Tax or the Use Tax, provided that Middleman B is also a licensed distributor. It is not clear whether the sale from Middleman B to Middleman C occurs in Illinois. If it does occur in Illinois, the sale would be exempt as a sale in Interstate Commerce if the cigarettes that were sold to Middleman C were not to be returned to Illinois. See Section 440.170, enclosed.

Your letter does not request information regarding the criminal penalties involved in transporting unstamped cigarettes in Illinois without proper licenses, but please note that they do exist.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.